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SIGNER

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

CICA Response to GAO - for Signature

file GAO

FROM:

Chief, Procurement Management Staff
Office of Logistics

EXTENSION

NO.

OL 5041-85

DATE

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1.

C/L&LPD/OGC

2.

3.

4.

AD/L

5.

6.

7.

8.

DDA
7D24 Hqs.

9.

10.

11.

12.

13.

14.

15.

Harry:

GAO's May 8, 1985, letter (Attachment A) requested we provide information on our compliance with the Competition in Contracting Act of 1984 (CICA). Our response, which has been prepared for your signature due to its high-level policy nature, basically says that we plan to comply with CICA, to the maximum extent practicable. Specific areas where our policy differs from CICA are as follows: 1) we do not advertise in the Commerce Business Daily; and 2) we will not publish various internal records.

It is our understanding that Mr. Van Cleve is friendly to the Agency's interests and therefore you may wish to call him in advance to discuss this letter (his phone # is 275-5207). An information copy of this package has been provided to [redacted] of OLL.

Central Intelligence Agency



Washington, D.C. 20505

Mr. Harry R. Van Cleve
General Counsel
441 G Street, N.W.
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Van Cleve:

STAT This is in response to your May 8, 1985, letter to [redacted] our Procurement Executive, requesting information for your presentation to the House Committee on Government Operations.

The procurement system of the Central Intelligence Agency (CIA) operates under the authority of sections 3 and 8 of the CIA Act of 1949, as amended, and a variety of exceptions to several procurement statutes including 41 U.S.C. 474(17). Pursuant to these authorities, CIA conducts procurement activities in the manner which best facilitates the accomplishment of the Agency's mission of responding to consumers of national intelligence. Mission requirements may dictate that procurements follow established procedures applicable to the civilian agencies, those applicable to military agencies, or even those utilized in the private sector. In all cases, Agency regulations provide that insofar as is practicable, the acquisition process will comply with those established guidelines and Congressional mandates which promote full and fair competition.

The Agency's structure is designed to protect the security or sensitivity of information involved with the Agency's acquisition process and, at the same time, provide adequate management control. As I am sure you can appreciate, there are a number of procedures applicable to federal agencies which are incompatible with the operation of the Agency's procurement system. The requirement to announce all acquisitions in the Commerce Business Daily,

Mr. Harry R. Van Cleve

for example, is inconsistent with basic operational requirements of an agency whose principal charter is the collection, analysis, and protection of intelligence and its sources. It also conflicts with the authority and responsibility of our Director to protect sources and methods.

I regret that we will be unable to provide you with the specific information you have requested, since it is not Agency policy to divulge details about our procedures and methods; however, I would like to assure you that we plan to comply with the Competition in Contracting Act to the maximum extent practicable, and I would be pleased to have you meet with a member of my staff, if you so desire, to assist you in integrating what data we might be able to provide for your use in testifying. [redacted]
our Procurement Executive, may be reached [redacted]

STAT
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Sincerely yours,

Harry E. Fitzwater
Deputy Director
for
Administration

Attachment A

24 MAY 1985



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

[Redacted]
Senior Procurement Executive
Central Intelligence Agency
Washington, D.C. 20505

MAY 8 1985

STAT

Dear [Redacted]

STAT

At the request of the chairmen and ranking minority members of the House Committee on Government Operations and the Subcommittee on Oversight of Government Management, Senate Committee on Governmental Affairs, we have established a task force to review executive agencies' implementation of, and subsequent compliance with, the Competition in Contracting Act of 1984. This task force is currently reviewing what executive branch agencies are doing and have done to implement the act (job code 000082). The House Committee is planning to hold hearings on this subject in June 1985. Consequently, the Committees have recently requested that we conduct a telephone survey to provide certain information, relating to your agency and others, needed to prepare for the hearings.

As director of the task force, I am writing to ask for your help in being as responsive as possible to this time critical request. Since you are the Senior Procurement Executive for your agency, it is important that your agency's responses to our questions reflect your knowledge and views. We plan to have one of our task force members call you during the week of May 13 to obtain the information needed on your agency either from you or the person you designate. Enclosed is the data collection form we are using for this telephone survey. We are sending it to you for advance review and preparation of your agency's responses.

We have attempted to design this form not only to meet congressional informational needs, but also to minimize the burden it imposes on you and other respondents. We appreciate your timely assistance in providing the information the Committees have requested concerning your agency.

If you need clarification of questions on the form or any other information relating to this request, please call Charles Conway on 275-9662 or Jim Alubowicz on 275-9632. Thank you for your cooperation.

Sincerely yours,

*Harry R. Van Cleve*Harry R. Van Cleve
General Counsel

Enclosure

UNITED STATES
GENERAL ACCOUNTING OFFICE

SUBJECT: Data Collection Instrument to Be Used in Determining
the Status of Executive Agency Implementing and
Supplementing Regulations and for Other Purposes

AGENCY CONTACTED _____

AGENCY PROCUREMENT EXECUTIVE _____

PERSON(S) CONTACTED _____

Position(s) _____

If other than the procurement executive, state the
reason:

DATE OF CONTACT _____ PHONE _____

PURPOSE: Information to complete this data collection
instrument will be obtained through telephone
contacts with the identified person(s) to obtain
information about the subject agency's status in
implementing the requirements of the Competition in
Contracting Act of 1984. The information will be
gathered by members of GAO's Interdivisional Task
Force on the Competition in Contracting Act to
satisfy the requests of the House Committee on
Government Operations and the Senate Committee on
Governmental Affairs, Subcommittee on Oversight of
Government Management.

NAME OF TASK FORCE MEMBER WHO CONDUCTED INTERVIEW:

INTRODUCTORY INFORMATION

At the request of the House Committee on Government Operations and the Senate Committee on Governmental Affairs, Subcommittee on Oversight of Government Management, the General Accounting Office created an interdivisional task force to review what executive branch agencies are doing and have done to implement the Competition in Contracting Act of 1984.

Procurement within the federal government is regulated by the Federal Acquisition Regulation System, which consists of the Federal Acquisition Regulations (FAR) and agency regulations which implement and supplement the FAR to satisfy the unique needs of the agency. The Federal Information Resources Management Regulation (FIRMR) also applies to certain procurements relating to automatic data processing and related resources.

The FAR originally took effect on April 1, 1984, and has been the single government-wide procurement regulation since that date. The FIRMR became effective on May 1, 1984. On April 1, 1985, the Competition in Contracting Act of 1984 (CICA) took effect requiring significant changes to the rules of federal government procurement. FAR changes implementing the requirements of the Act were issued as interim regulations, identified as Federal Acquisition Circular (FAC) 84-5, and are to be used on all solicitations issued after March 31, 1985. Changes to the FIRMR were issued as temporary regulations and also took effect on April 1, 1985.

FAR 1.301(b), as amended by FAC 84-6 on January 10, 1985, requires publication of agency acquisition regulations that implement or supplement the FAR, including "significant revisions" to those regulations, in accordance with FAR 1.501 and as required by section 22 of the Office of Federal Procurement Policy Act, as amended, and other applicable statutes, under certain conditions. These conditions are when the regulations (1) have a significant effect beyond the internal operating procedures of the agency or (2) have a significant cost or administrative impact on contractors or offerors. However, publication is not required for issuances that merely implement or supplement higher level issuances that have previously undergone the public comment process, unless such implementation or supplementation results in additional significant cost or administrative impact on contractors or offerors or effect beyond the internal operating procedures of the issuing organization. FAC 84-6 made these provisions effective on November 29, 1984.

QUESTIONS

1. Has your agency issued any regulations implementing and/or supplementing the FAR or the FIRMR which took effect either on or after April 1, 1984?

(Sub-organization regulations are covered in question 10.)

(ISSUED means regulations which were (1) signed or authorized by the agency head, or another high-level official for the agency head, (2) intended to take effect, at least initially, in that form, and (3) made available to agency personnel, as well as others outside the agency, as appropriate. Regulations may be issued as "final", "interim", or "temporary" regulations. In contrast, the term "proposed regulations" as used in this data collection instrument (1) does not meet the definition of "issued" and (2) means regulations which are published or disseminated in a preliminary or draft state and are not intended to take effect in that form.)

___ YES, both the FAR and the FIRMR.

___ YES, the FAR but not the FIRMR.

___ YES, the FIRMR but not the FAR.

___ NO. GO TO Q.8, PAGE 7

2. Does the latest version of these regulations fully conform to the Competition in Contracting Act (CICA)?

IF THE AGENCY HAS MORE THAN ONE SET OF IMPLEMENTING AND/OR SUPPLEMENTING REGULATIONS IN EFFECT AT THIS TIME (FOR EXAMPLE, SEPARATE REGULATIONS FOR THE FAR AND THE FIRMR), PLEASE PROVIDE THE INFORMATION REQUESTED IN THIS QUESTION FOR EACH SET OF REGULATIONS AND IDENTIFY THE REGULATION TO WHICH EACH ANSWER APPLIES.

___ YES.

___ NO.

- 2-1. Regardless of how you answered question 2, does the latest version of these regulations fully conform to the FAR, as amended by FAC 84-5? (If so, indicate in which form they were issued?)

___ YES, and they have been issued as FINAL regulations.

___ YES, but they have been issued as interim or temporary regulations.

___ YES, other. Describe:

___ NO. Explain why not.

3. Since your agency has issued regulations which implement or supplement the FAR or the FIRM, when did the latest version of these regulations take effect?

IF THE AGENCY HAS MORE THAN ONE SET OF IMPLEMENTING AND/OR SUPPLEMENTING REGULATIONS IN EFFECT AT THIS TIME (FOR EXAMPLE, SEPARATE REGULATIONS FOR THE FAR AND THE FIRM), PLEASE PROVIDE THE INFORMATION REQUESTED IN THIS QUESTION FOR EACH SET OF REGULATIONS AND IDENTIFY THE REGULATION TO WHICH EACH ANSWER APPLIES.

Date: ____ / ____ / ____

4. Whether or not the regulations fully conform to CICA or the FAR, as amended by FAC 84-5, when were they issued?
(See definition of issued at question 1.)

IF THE AGENCY HAS MORE THAN ONE SET OF IMPLEMENTING AND/OR SUPPLEMENTING REGULATIONS IN EFFECT AT THIS TIME (FOR EXAMPLE, SEPARATE REGULATIONS FOR THE FAR AND THE FIRM), PLEASE PROVIDE THE INFORMATION REQUESTED IN THIS QUESTION FOR EACH SET OF REGULATIONS AND IDENTIFY THE REGULATION TO WHICH EACH ANSWER APPLIES.

Date of the latest regulation issued: ____ / ____ / ____

5. Did the agency publish them (or a notice of their availability) in the Federal Register for public comment?

IF THE AGENCY HAS MORE THAN ONE SET OF IMPLEMENTING AND/OR SUPPLEMENTING REGULATIONS IN EFFECT AT THIS TIME (FOR EXAMPLE, SEPARATE REGULATIONS FOR THE FAR AND THE FIRMR), PLEASE PROVIDE THE INFORMATION REQUESTED IN THIS QUESTION FOR EACH SET OF REGULATIONS AND IDENTIFY THE REGULATION TO WHICH EACH ANSWER APPLIES.

___ YES.

If the above answer was checked, then obtain an answer to the following question:

- 5-1. What date were they (or the notice) published in the Federal Register for public comment and please provide the Federal Register page citation?

Date ___ / ___ / ___

Page _____

___ NO.

- 5-2. If no, why not? (Check all that apply.)

___ Because the regulations will not have a significant effect beyond the internal operating procedures of the agency. (See FAR 1.301(b).)

___ Because the regulations will not have a significant cost or administrative impact on contractors or offerors. (See FAR 1.301(b).)

___ Because they were issued before November 29, 1984.

___ Other. Explain:

IF QUESTION 2-1 WAS ANSWERED "YES", GO TO Q. 9.

IF QUESTION 2-1 WAS ANSWERED "NO", GO TO NEXT QUESTION.

6. Do you expect your agency to either (1) issue a new set of implementing and/or supplementing regulations, (2) revise its current one or (3) revise its previous one so that it conforms to the FAR, as amended by FAC 84-5?

IF THE AGENCY HAS MORE THAN ONE SET OF IMPLEMENTING AND/OR SUPPLEMENTING REGULATIONS IN EFFECT AT THIS TIME (FOR EXAMPLE, SEPARATE REGULATIONS FOR THE FAR AND THE FIRMR), PLEASE PROVIDE THE INFORMATION REQUESTED IN THIS QUESTION FOR EACH SET OF REGULATIONS AND IDENTIFY THE REGULATION TO WHICH EACH ANSWER APPLIES.

- ☐ YES, issue a new set of regulations so that it conforms to the FAR, as amended by FAC 84-5.
- ☐ YES, revise its current set of regulations so that it conforms to the FAR, as amended by FAC 84-5.
- ☐ YES, revise its previous set of regulations so that it conforms to the FAR, as amended by FAC 84-5.
- ☐ NO. Please explain why not.

IF YOU CHECKED "NO" ABOVE FOR ANY REGULATION, GO TO Q. 7.

OTHERWISE, GO TO Q. 9, NEXT PAGE.

7. Has your agency rescinded or does it plan to rescind its set of implementing or supplementing regulations not in conformance with the FAR, as amended by FAC 84-5, rather than modify it?

IF THE AGENCY HAS MORE THAN ONE SET OF IMPLEMENTING AND/OR SUPPLEMENTING REGULATIONS IN EFFECT AT THIS TIME (FOR EXAMPLE, SEPARATE REGULATIONS FOR THE FAR AND THE FIRMR), PLEASE PROVIDE THE INFORMATION REQUESTED IN THIS QUESTION FOR EACH SET OF REGULATIONS AND IDENTIFY THE REGULATION TO WHICH EACH ANSWER APPLIES.

- ☐ YES, IT HAS BEEN RESCINDED.

7-1. If so, please provide the date. / /

- ☐ YES, THE AGENCY PLANS TO RESCIND IT.

7-2. If so, please provide the estimated date. / /

- ☐ NO. Why not? Explain why.

- ☐ NOT APPLICABLE. Explain why.

IF THE AGENCY HAS ISSUED ANY REGULATIONS IMPLEMENTING OR SUPPLEMENTING THE FAR OR THE FIRMR WHICH ARE STILL IN EFFECT, GO TO QUESTION 9.

OTHERWISE, GO TO NEXT QUESTION.

8. Do you expect your agency to issue any regulations which implement and/or supplement the FAR or the FIRMR?

☐ YES, both the FAR and the FIRMR.

☐ YES, the FAR but not the FIRMR.

☐ YES, the FIRMR but not the FAR.

☐ NO.

8-1. If "no", what regulations does your agency use?
(Check all that apply.)

☐ FAR.

☐ FIRMR.

☐ OTHER. Describe.

9. How would you describe the training and general awareness level among procurement and other personnel in your agency responsible for implementing CICA as to their ability to comply with the Act?

☐ HIGHLY SATISFACTORY.

☐ SATISFACTORY.

☐ NEITHER SATISFACTORY NOR UNSATISFACTORY.

☐ UNSATISFACTORY.

☐ HIGHLY UNSATISFACTORY.

10. Are there any sub-organizations in your agency which have issued regulations that took effect on or after April 1, 1984, implementing or supplementing the FAR or the FIRMR?
(Check all the answers that apply.)

☐ NO.

- 10-1. Do you expect any sub-organizations in your agency to issue such regulations?

☐ NO.

☐ YES.

- 10-2. If "yes", which sub-organizations?

IF "NO" TO QUESTION 10, THEN STOP.

☐ YES, both the FAR and the FIRMR.

- 10-3. Please name the sub-organization(s) and the issuance date(s)?

Sub-organization

Date

☐ YES, the FAR but not the FIRMR.

- 10-4. Please name the sub-organization(s) and the issuance date(s)?

Sub-organization

Date

☐ YES, the FIRMR but not the FAR.

- 10-5. Please name the sub-organization(s) and the issuance date(s)?

Sub-organization

Date

11. Does the latest issued version(s) of the sub-organization(s) set(s) of regulations fully conform to the FAR, as amended by FAC 84-5?

(Check both "yes" and "no" if both answers apply; for example, if there is more than one sub-organization that has issued implementing or supplementing regulations and different answers apply to different sub-organizations.)

___ YES.

- 11-1. List all the sub-organizations to which this answer applies and the dates these sets of regulations were issued.

Sub-organization

Date

___ NO.

- 11-2. List all the organizations to which this answer applies and indicate (1) whether these sets of regulations have been rescinded and (2) if so, the date(s) they were rescinded.

Sub-organization

Rescinded?

Date

IF ALL IMPLEMENTING AND SUPPLEMENTING REGULATIONS ISSUED BY SUB-ORGANIZATIONS IN THE AGENCY THAT ARE STILL IN EFFECT FULLY CONFORM TO THE FAR, AS AMENDED BY FAC 84-5, THEN GO TO QUESTION 13.

OTHERWISE, GO TO NEXT QUESTION.

12. For the sub-organization(s) whose sets of regulations (1) do not fully conform to the FAR, as amended by FAC 84-5, and (2) have not been rescinded, will these sets of regulations be rescinded or changed to conform to the FAR, as amended?

(Check both "yes" and "no" if both answers apply; for example, if there is more than one sub-organization whose regulations do not fully conform to the FAR and different answers apply to different suborganizations.)

___ YES, they will be rescinded.

- 12-1. List all the sub-organizations to which this answer applies and the estimated date(s) that the rescissions will be made.

Sub-organization

Estimated date

___ YES, they will be changed to conform to the FAR, as amended by FAC 84-5.

- 12-2. List all the sub-organizations to which this answer applies and the estimated date(s) that the changes will be issued.

Sub-organization

Estimated date

___ NO.

- 12-3. List all the sub-organizations to which this answer applies and explain why not.

United States General Accounting Office

13. Have the sub-organization(s) regulations that were issued been published in the Federal Register for public comment? (Check all the answers that apply.)

☐ YES.

- 13-1. List all the sub-organizations to which this answer applies as well as the date and the Federal Register page citation?

Org. _____ Date ____/____/____ Page _____

Org. _____ Date ____/____/____ Page _____

☐ NO. THEY HAVE NOT YET BEEN PUBLISHED,
BUT ARE EXPECTED TO BE PUBLISHED.

- 13-2. List all the sub-organizations to which this answer applies as well as the estimated date(s) they might be published?

Org. _____ Estimated Date ____/____/____

Org. _____ Estimated Date ____/____/____

☐ NO, AND THEY ARE NOT EXPECTED
TO BE PUBLISHED.

- 13-3. List all the sub-organizations to which this answer applies.

- 13-4. If the answer was "no, and they are not expected to be published", why not? (Determine for each sub-organization.)

☐ Because the implementation and supplementation will not result in significant cost or administrative impact on contractors or offerors or effect beyond the internal operating procedures of the issuing organization. (See FAR 1.301(b).)

☐ Because issuance was before November 29, 1984.

☐ Other. Explain.